

LABOR MANAGEMENT RELATIONS QUARTERLY MEETING
FCI MEMPHIS
JULY 19-20, 2000

PARTICIPANTS:

MANAGEMENT:

Linda Prescott
Phillis Morgan
Regina Sullivan
Don Laliberte
Christopher Wade
Nikki Gallo

UNION:

Jim Turner
Charlie Bohannon
Allen Green
Manny Borquez
Dennis Biesik
Larry Raney
Ben Jetter
Rick Miller
Ron Rubottom

Subject Matter Expert:

Tracy Johns

Summary of Issues Addressed During LMR Meeting:

Acting Supervisors (and the Effect on Union Membership)

COLA

Cornell Corrections (Phillipsburgh Facility)

Discipline of Union Official (Left Vehicle Unattended)

FCI Waseca - Changes to Working Conditions

FLSA Exempt/Non-Exempt Status

Incentive Awards

ISM Supervisor Positions

Local Training by Jim Holland

Mid-Level Labs (Elimination of)

National Union Representatives on Local Policy Negotiations

OIA: Authorizations for Investigations

OIA: Affidavits Provided by Investigators

Operation Lieutenants

Professional Liability Insurance

Promotion Board Scores

Quarterly Rosters

Reasonable Accommodation Language

Safe Harbor/Safe Haven

Sick Leave Abuse

SILs

Temporary Appointments of Correctional Officers

USP Atlanta (Local Issues)

National Agenda Items: UNION

1. **ISSUE:** “Human Resources Departments are telling staff that they are not allowed to view their own scores on promotion boards they applied for but were not selected for.”

Resolution: *While the Merit Promotion Plan does not require management to give applicants their scores, neither the Union nor Management want staff to feel the need to file a grievance simply to be able to view their own scores. Management indicated that the HRM in question was asked to show the scores and they would check to confirm that this was done.*

2. **ISSUE:** “Captains are calling in every individual that has taken sick leave and being accused in writing of abusing sick leave and are further being told in writing that if the abuse continues, the employee will have to get medical certification prior to any further leave being approved. Employees are not receiving in writing what evidence or material facts have led the Captain to believe that they are abusing their sick leave, or what they need to do to correct the perceived abuse of sick leave. In addition, staff are not being told that if they are ordered to provide medical documentation when they call in sick that it becomes a condition of employment and the Agency must pay for the doctor’s visit. In addition, per the Captain’s order, it would be impossible for the employee to use sick leave at all since the letter states that they must get the certification **prior** to requesting sick leave and having it approved. They are also being told that any future sick leave must be requested from the Captain only, not their first line supervisor. All of this is in violation of 5 USC and the Master Agreement. I am requesting that all ‘counseling letters’ be pulled.”

Resolution: *The Union stated that this is happening at FCI Tallahassee and that the Captain has allegedly called in every staff member who has ever used sick leave and “threatened them” by putting them on a sick leave abuse letter. Management stated that they understood (from the Captain and the HRM) that this was not accurate; only three employees were specifically counseled about their use of sick leave. The Union responded that they had the form letter that the Captain had been using and Management requested a copy. The Union provided a copy of the letter but Management responded that there was nothing particularly wrong with the content of the letter. Management went on to state that the agency has the right to request medical documentation. However, the Union asked how an employee is supposed to get to the doctor to get the medical*

documentation if the employee's supervisor won't approve the sick leave in the first place? Management responded that the sick leave should be approved contingent on the employee obtaining and providing the documentation once he or she returns to duty. Management asked the Union how this issue could be resolved. The Union indicated that they want every letter retracted from the employees' files. Management indicated that there were only three employees who received a letter and that those employees were given the opportunity to respond during the counseling sessions if they had a problem. Therefore, Management did not believe it appropriate to order the removal of those letters.

3. **ISSUE:** *"Management at FCI Waseca is implementing wholesale changes in work and conditions and implementing said changes prior to negotiating with the Union even after the Union has requested to negotiate the announced changes in writing."*

Resolution: *The Union stated that the local Union has filed ULPs on issues such as late nights and counselors working as unit officers on weekends/holidays. These were filed because the Union was told (allegedly by local Management) to do whatever they felt they needed to do. Management responded that OGC will handle those ULPs upon receipt.*

4. **ISSUE:** *"We have high security level facilities that have no safe harbor for staff."*

Resolution: *The Union stated that they are particularly concerned about USP Atlanta. There was a discussion about the difference between safe harbor and safe haven. Management stated that they believed the issue being referred to is "safe haven", which is an area where staff can go to get out of danger; Management believes that staff in each BOP facility should know where those areas are. Management continued by stating that Management at the local level is currently working on proposals and will work with USP Atlanta's local president (who was present at this meeting) on this issue. The Union asked that these safe haven areas be designated throughout the institution, including in UNICOR, and requested a timeframe for the proposals. Management indicated that proposals might be ready by the end of the month (July). USP Atlanta's local president indicated that he could wait until he got the proposals and then would negotiate this at the local level. However, if he doesn't receive the proposals, he will contact the Union's Executive Board and they will bring it up at the national level for further discussion. Management*

agreed to find out from the field which institutions currently do and do not have safe haven areas.

5. **ISSUE:** “In order to save money Captains are eliminating positions from the quarterly roster (actually removing the position from the roster IE: Day watch unit officer) and in other instances are simply vacating a position that is on the roster on a permanent basis and assigning the staff elsewhere. They are permanently using staff from other departments to man these posts which the Union believes is a violation of not only Bureau program statements and staffing guidelines but the law as well. Staff from other departments are not having the fact that they are out of their assigned duties noted on their T&As or their quarterly SILs. We have been repeatedly told by the Director that per capita targets are goals only and that they realize that some institutions will not be able to meet them. Furthermore, non-custodial staff are being penalized because custodial staff utilize their right under the law to request and use sick and/or annual leave. The Union feels that this is a clear violation of 5 USC and the Master Agreement.”

Resolution: *Management asked the Union if the roster has been changed and the Union said no, it had not. However, the Union stated the issue is that the daily roster doesn't reflect the quarterly roster, i.e., a post has been eliminated but the person has been reassigned. The Union believes that since we negotiated the quarterly roster, Management can't simply eliminate a post without negotiating that change. Management indicated that this should not be occurring and it was their understanding that it was not happening. Management asked for copies of the roster which showed that this elimination of posts was occurring; the Union agreed to provide that information. The Union also stated that a national grievance has been filed on this issue.*

A subsequent discussion ensued in which the Union stated that employees should be receiving SILs reflecting that they were pulled from their Correctional Officer position to work on another post. In addition, the daily roster should reflect that a particular employee is elsewhere. Management reiterated what they believed to be the main issues: 1) roster documentation and 2) a nationwide message about the importance of SILs. Management agreed to send out an EMS to reemphasize compliance with Article 18 of the Master Agreement. However, Management asked the Union to wait on drafting the language until such time as they could return to the Central Office and make sure that the

guidance is consistent with the two other messages they had previously put out. The Union agreed and asked if Management could send the message to the Union's Executive Board before sending out. Management agreed with this. In addition, Management stated that Correctional Services is currently redrafting the Correctional Services Manual and offered the Union the opportunity to work on drafting language at this stage. The Union responded that they will wait until the new draft comes out to comment.

6. **ISSUE:** “Would like to know the status of the ISM supervisor position that was supposed to be eliminate. This is the second request for this information and since the first time a program statement has been issued, however, we still see no movement in the elimination of this position. However, many institutions already short on custodial staff are still pulling GS8 correctional officers to act as GS9 lieutenants when they could and should be using this position that is in the same series.”

Resolution: *Management informed the Union that the due date for the elimination of the positions, per the current policy, is December 2001; the local institutions will work out the specifics by then. The Union then asked why these ISM supervisors aren't being used to work as Acting Lieutenants since they are in the same job series. The Union went on to state that they don't believe Management has the right to assign a GS-8 officer as a GS-9 Acting Lieutenant. Management responded that it is an assignment of work. In addition, the use of ISM Supervisors is a Management option. This was a discussion item only.*

7. **ISSUE:** “Would like to be provided with the law, rule or regulation that empowers the Agency to order staff to act as a supervisor. Per written guidance from the LMR Branch employees acting as supervisor are not afforded the same rights and protection as bargaining unit staff. The Union believes that it is a violation of the statute for the Agency to unilaterally interfere with and deny an employee the right to join, be a member of, or participate in the Union. When the Agency orders an employee to act in the capacity of a Manager you are denying and ending their Union membership against their wishes.”

Resolution: *Management indicated that there is FLRA case law from the 1990s which clearly states that union dues do not stop when an employee is acting in the capacity of a Manager. In addition, should the employee be disciplined while Acting, he or she is still entitled to a Union*

representative since the employee does not lose his or her bargaining unit status during this time. The issue of “temporary promotions” was raised. Both Management and Union agreed that an employee’s dues will be stopped during a temporary promotion since the agency is paying the employee at a higher salary level.

8. **ISSUE:** “MDC Honolulu: Will the Wage Grade series employees receive a 25% COLA - if the answer is no, then what is the reasoning behind that? Will all GS employees receive a 25% COLA, including GS level 3 to 10 and up-to-date rates list? Any special rates or positions without special rates should be posted on all vacancy announcements?”

Resolution: *The Union stated that this concern was initially raised because of a situation at MDC Guaynabo. Management stated that WS employees do not receive a COLA. The Union responded that the HRMs in the field are putting out some inaccurate information. Management indicated that there is a pending lawsuit on the issue of COLA being inappropriately set for areas off the continental United States, and adjustments will be made based on the results of the settlement. However, it will take several years to implement the salary changes, thus, there will be interim base salary rates. There are no plans to increase the base salary for WS employees. Management continued by stating that it is made clear in all vacancy announcements whether or not an employee will be receiving the 25% COLA. Management agreed to put out an HRMD Update Article, guidance regarding the fact that COLA is tax free, as well as a clarification that the 25% COLA is on top of the base rate and not the locality pay.*

9. **ISSUE:** “USP Lompoc: From approximately 1986-1989 the USP in Lompoc was making temporary appointments of correctional officers for some of the following reasons: large number of correctional officer vacancies; two to three month wait for applicants to receive notice of ratings and appear on Correctional Officer Registers; increased loss of Correctional Officers to California State Dept. of Corrections due to low salary comparison at that time; probationary employee resignation due to custody level on institution; lack of applicants; and need to maintain adequate staffing levels to maintain institution security. The BOP should count the temporary time before being converted to full time as time worked towards retirement and change the affected employees entry date, especially to affected employees that have remained in the BOP and have made it a career.”

Resolution: *Management indicated that the above is based on OPM regulations and the Bureau has no discretion. Management provided the Union with a written explanation of what different scenarios exist under these circumstances. The Union requested that Management contact USP Lompoc to inform them this information. Management indicated they would contact the institution.*

10. **ISSUE:** “What is the status of the Justice Department issuing guidance and procedures on the reimbursement of Professional Liability Insurance for Law Enforcement Officers and Managers & Supervisors?”

Resolution: *The Union indicated that other agencies have already implemented the insurance plan for its employees. Management assured the Union that the Bureau’s policy will be coming out very soon and included in the policy is the extension of the insurance coverage to many employees, including attorneys. Since payments are only made once a year, staff are not being inconvenienced by the delay in the implementation. This was a discussion item only.*

11. **ISSUE:** “When the Office of Internal Affairs provides Guidance and Authorization for the conduct of an Official Investigation at the local level concerning Bargaining Unit Employees who request representation, some local SIS or SIA's deny the representatives to see the actual authorization from OIA. What Agency policy, rule or higher regulation is being used to deny these requests?”

Resolution: *Management stated that there is language in the Standards of Employee Conduct which clearly states who may conduct official investigations. Therefore, if an SIS is conducting the investigation, it should be considered official. The Union asked whether a Warden is authorized to order an investigation and Management responded “yes”. The Union asked for a copy of the OIA authorization (Form A or Attachment A which is sent by the Warden to OIA during the referral stage) or a case number which indicates that OIA has authorized the investigation. Management responded that this notification interferes with the investigation process. The Union believes it is the employee’s right to be notified. Management and the Union agreed to table this issue until the next Quarterly LMR Meeting, during which the Chief of OIA would be invited to discuss this issue in further detail with the Union.*

12. **ISSUE:** “IAW Article 3 of the CBA; Local negotiations concerning proposed

policy or program statement change that affect any personnel policies, practices, or conditions of employment at the local level will parallel the same procedures conducted at the National Level. Their seems to be conflicting guidance given to the field concerning these types of negotiations; What is the Agency's Official response when Local representatives appoint National representatives for these types of negotiations?"

Resolution: *The Union stated that the local Union has a right to designate a representative. Management agreed that the local Union can appoint a national representative, however, their interpretation of the Master Agreement is that the Agency will not pay for the national representative to travel to an institution to conduct local policy negotiations. The Union indicated that they are working with AFGE to file a lawsuit against the Agency because they interpret the Master Agreement differently.*

13. **ISSUE:** "Due to a recent proposal for disciplinary action against a local Union Official for leaving an Institution vehicle unattended while running, The Council is requesting that all BOP vehicles have a warning sign posted on the dash of all vehicles that state Do Not leave Vehicle Running While Unattended."

Resolution: *The Union indicated that the Regional Director is working with the Union's Mid-Atlantic Regional Vice President to resolve this. This was a discussion item only.*

14. **ISSUE:** "Why is the Agency continuing to allow the practice of GS-08 Officers & GS-09 Lt.'s act as the operation Lieutenants when the Captain is not present for duty?"

Resolution: *The Union stated that this is happening at "secure installations". Management responded that Chapter 1, section f. of the Correctional Services Manual specifically states where there are to be operations lieutenants. The Union asked Management to send out a nationwide reminder of what the policy states, however, Management asked for the specific locations where this is happening so the Correctional Services Administrator (who was present at this meeting) could try to correct the problem at the local level. The Union would not provide the names of the institutions because they felt the institutions would be targeted and stated that they would provide the names in the form of a formal grievance.*

15. **ISSUE:** “Why is the Agency removing post from the daily roster and reassigning anywhere circumventing the negotiated roster procedures?”

Resolution: *See minutes from Issue #5*

16. **ISSUE:** “Jim Holland former BOP Warden was contracted to teach classes to BOP Institutions on a Program Statement that was invoked to be negotiated by the CPL-33. What is the nature and proposed training that is to take place?”

(Clarification per Jim Turner: This refers to training that Jim Holland gave at Sandstone)

Resolution: *Management indicated that they spoke with the Mid-Atlantic Regional Director (RD); the RD stated that the curriculum was developed in cooperation with the Union and a survey was sent to correctional counselors to establish what their needs would be for the training. Specific direction was provided not to make the training about policy. The RD was not aware that any policy training had occurred at Sandstone and further indicated that there had been no reported problems from the training provided in the Mid-Atlantic region. The Union was satisfied with this explanation.*

17. **ISSUE:** “We would like a copy of each bargaining unit position as to their FLSA Exempt or Non Exempt status. Several institutions have listed various positions as exempt while others have listed them as non-exempt. This has significant impact on overtime and compensatory time as well as other impact on the affected staff.”

Resolution: *Management explained that there are standard position descriptions (PDs) for most positions but they are not mandated, therefore, they could change at the local level. Using these standard Pds, and with the Union’s input, the Pay and Position Management Section prepared a list of suggested FLSA status for these positions (the list was provided to the Union). The Union stated that a plumber at FCI McKean and a plumber at USP Lewisburg should have the same FLSA status. Management agreed that in most instances, that would be true, but in PD. However, there might be circumstances which could make the difference between an employee being Exempt or Non-Exempt, e.g., when the number of employees a plumber some instances it might depend upon local differences in the position description. Management agreed to look into any guidelines which OPM might have issued recently regarding PDs*

(per the Union's belief that there were such guidelines in existence).

18. **ISSUE:** “We would like to know if the BOP has filed a lawsuit against Cornell Corrections for failure to uphold their contract. At a conservative cost of approximately \$30 per day per inmate, Cornell was supposed to be operating a 900 bed facility in Phillipsburgh, PA, but due to the negligence they have failed to honor their contract. Therefore, the Bureau should be able to recover damages for housing the contracted inmates at approximately \$27,000 per day or \$4,860,000 for the first 180 days of the year. If the Bureau has not filed a lawsuit we would like to know why or if they plan to in the near future?”

Resolution: *Management informed the Union that the Citizens Advisory Committee has sued the BOP and not vice versa. Therefore, there has been no breach of a contract because we have yet to receive any inmates. The Union was satisfied with this information.*

19. **ISSUE:** “At the last LMR meeting it was discussed that the Bureau is eliminating mid-level labs (approximately 5 Bureau-wide). Is this a reduction, transfer of function or reorganization? The Northeast was told that they will have to give the positions back to the region. We would like our 9 month notification as outlined in the Master Agreement so that we may assist the effected employees more effectively and provide them with accurate information instead of the rumors that have surfaced. We would also like to know who is going to perform the functions that the Lab Tech did? There are rumors that it will be contracted out; if this is correct, then we would request a copy of the A-76 study that would be required to contract the position.”

Resolution: *Management explained that there is a draft Operations Memorandum(OM) which will detail the procedures, however, it is not ready yet. The draft OM will be negotiated with the Union. This will not be a RIF or transfer of function but rather a reorganization. As such, a nine-month notification to the Union is not required. The Union responded that the people affected in the field are getting anxious because they know something will be happening but they don't know how to prepare. The Union asked for some guidance to be put out to the affected institutions. Management agreed to ask Health Services to speak with those institutions (mostly in the Mid-Atlantic and Northeast regions). Additionally, Management would ask the NERO HRA to contact the RVP to discuss the specific situations in that region. Since the end of the meeting, this has occurred.*

20. **ISSUE:** “We would like to discuss the Reasonable Accommodation Language in vacancy announcements. Suggest using the following wording on all vacancy announcements in the BOP:
- This agency provides reasonable accommodation to applicants with disabilities. If you need a reasonable accommodation for any part of this application and hiring process, please notify the agency. The decision on granting reasonable accommodation will be on a case-by-case basis.***

This language will comply with President Clinton’s Executive Order 13078 and OPM’s Disabilities and accompanying Employment Guide.

Resolution: *Management informed the Union that this language is already in the vacancy announcements and guidance was put in the March 2000 HRMD update to make sure the language was included. Management further indicated that the language is specifically for external candidates. The Union asked for a copy of the March 2000 HRMD Update Article and Management agreed to provide it.*

21. **ISSUE:** “Why is the Union cut out of incentive awards? We are not allowed to represent the employees for special act awards but the institution spends \$360,000 a year on awards. Does our local need to get Congress involved to ensure this money is spent properly and fairly? Local 1145 is asking for representation on the committee as prescribed in the program statement. We had it in the past and want it again. We want managers to hold an incentive awards committee for special act awards because these awards are not being done properly in Atlanta and bargaining unit employees are being denied awards.”

Resolution: *This issue was dropped by the Union.*

22. **ISSUE:** “Why are so many posts still being vacated in Atlanta? Why is line staff burdened with this problem?”

Resolution: *The Union expressed their concern that approximately 30-40 vacancies exist in Custody alone and for a high level institution, this is serious. The Union believes this is a money issue. Management stated that they had spoken to Atlanta and the institution is making every effort to hire staff to fill the vacancies. The Union asked why staff are leaving and why new staff cannot be hired fast enough. The Union also indicated that the same problem exists at FCI Waseca, i.e., that nobody is applying for positions. Management agreed to look into this further and by the end of the meeting, the following information was provided to the Union: Out of the*

386 complement in Custody at Atlanta, there were only 8 or 9 officer vacancies (as of March 2000). The rapid turnover is due mostly to promotions, not staff leaving the agency. Management indicated that the local Union has been shown the interview schedule and position strength report. The Examining Section was contacted; they indicated Atlanta has continuously requested registers, and is doing everything possible to keep up with and ahead of the staff moving out of Atlanta. In regard to Waseca, Management indicated that out of the 93-person complement in Custody, 92 of those positions are currently filled and there are two new Institution Familiarization classes. Since July 2000, the institution has asked for six certificates and has selected from every one. The Union was satisfied with the information provided.

23. **ISSUE:** “Why do the Programs staff in Atlanta have to do two-late nights when many other institutions only do one? Is it Program’s job to pick up the slack for custody or is it everyone’s?”

Resolution: *Management informed the local president at USP Atlanta that based on Unit Management Manual negotiations some time ago, the agreed-upon language indicated that there would be “at a minimum” one late night. This explains why there is variance among institutions. The local president indicated he would work with local Management in resolving this issue.*

24. **ISSUE:** “Why does the BOP think that it is fair to completely block out three months of annual leave for the bargaining unit in Atlanta? The Master Agreement calls for ‘total year scheduling’”.

Resolution: *Management stated that there is currently an arbitration going to hearing on this issue. The Union agreed to drop this issue from the agenda.*

25. **ISSUE:** “SCR: Bargaining Unit employees being forced to become acting managers, i.e., acting lieutenants, acting unit managers, etc. I have not discussed this with the Regional Director yet; this might be resolved prior to the LMR Meeting in Memphis in July.”

Resolution: *This issue was resolved prior to the meeting, thus, the Union withdrew it from the agenda.*